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Federal Communications Commission
Office of Secretary

March 27, 1997

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Re: CS Docket No. 95-184

Dear Mr. Caton:

This attached position paper was sent today to the persons listed below on behalf of the undersigned.

Respectfully,

Andrew T. Kreig
Andrew T. Kreig
Acting President
Wireless Cable Association International, Inc.

Deborah Costlow
General Counsel
Independent Cable & Telecommunications
Association

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Acting Secretary
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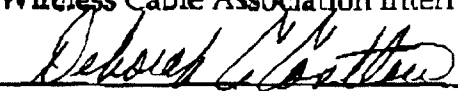
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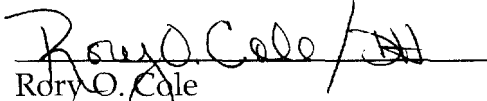
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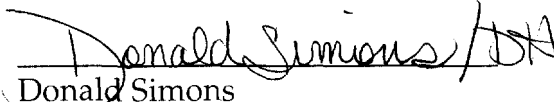
Andrew T. Kreig
Acting President
Wireless Cable Association International, Inc.



Deborah Costlow
General Counsel

William F. Caton
March 27, 1997
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Rory O. Cole
Chief Operating Officer
OpTel, Inc.


Donald Simons
Director - Regulatory Affairs
MultiTechnology Systems, Inc.

cc: William F. Caton
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Julius Genachowski
Marsha McBride
Suzanne Toller
Anita Wallgren
Meredith Jones
John E. Logan
Rick Chessen
JoAnn Lucanik
Larry Walke

Common Ground

Based on NCTA's recent proposal to the Commission, there is some ground for agreement here between NCTA and competitors to franchised cable operators. We and the NCTA agree:

- that exclusive contracts are pro-competitive. Indeed, as we have explained in our pleadings, the ability to obtain an exclusive right to serve an MDU is essential for most new entrants.
- that exclusive contracts that run in perpetuity are anticompetitive because they foreclose competition indefinitely and engender obsolescence. Here, the appropriate Commission response should be to subject perpetual contracts to a "fresh look."
- that, in order to provide realistic access to MDU inside wiring and to avoid unnecessary inconvenience to MDU residents, the broadband demarcation point in MDUs should be moved to the point at which the wire becomes dedicated to an individual subscriber's unit and the Commission should oppose loop-through wiring configurations.
- that the Commission should not restrict bulk billing arrangements (with the *proviso* that the Commission enforce vigorously the statutory proscription against predatory bulk discounts).

We disagree with NCTA, however, that these principles should apply only in states that mandate that the franchised cable operator have access to all MDUs. If exclusivity is pro-competitive in access states for franchised cable operators, it is pro-competitive everywhere. Similarly, there is no reason to move the broadband demarcation point only in access states. Once there has been a switch of service providers, the wire running from the cable riser or lockbox to each resident's unit is useless to the former service provider.

The only issue here is the level of compensation to the cable operator, but the Commission already has determined that cable operators are to be compensated for lost cable home wiring on the basis of the per-foot replacement cost of the wire itself. Moving the demarcation point of the same home run wire from 12-inches outside of the subscriber's unit to the point where the wire becomes dedicated to that subscriber's unit does not undermine the rationale supporting that rule.